IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4692 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESHBHAI MAGANBHAI DAVE

Versus

STATE OF GUJARAT

Appearance:

MR BM MANGUKIYA for Petitioner

MR SJ DAVE, AGAP for Respondent Nos.1 and 2

MR PRASHANT G DESAI for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 07/08/2000

ORAL JUDGEMENT

Leave to amend the cause title for adding the Jail Superintendent, District Jail, Junagadh is granted. Petitioner is directed to carry out the amendment by

adding the Jail Superintendent, District Jail, Junagadh as respondent No.4 in this petition forthwith.

2. By means of filing this petition, the petitioner has challenged the order of detention dated 3-5-2000 passed by the Police Commissioner, Surat City branding him as a dangerous person.

3. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. It appears that order of detention has been passed on 3-5-2000 against four persons. All these four persons have preferred petitions being Special Civil Application Nos.4692 of 2000, 4693 of 2000, 4694 of 2000 and 4965 of 2000 respectively. Out of these four persons, order of detention in respect of the petitioner of Special Civil Application No.4695 of 2000 has been revoked by the authority and same was disposed of accordingly. Whereas Special Civil Application Nos.4693 of 2000 and 4694 of 2000 have been disposed of by this Court in view of the revocation of the order of detention by the State Government based on the opinion of the Advisory Board. This matter was kept as a part heard to be heard along with the above numbered petitions, I have heard this matter today.

4. During the pendency of this petition, present petitioner had preferred one Civil Application No.5244 of 2000 in Special Civil Application No.4692 of 2000 praying for parol on the ground that wife of the petitioner has delivered premature twins out of which, one is expired and the condition of the other is serious and further on the ground that health of wife of the petitioner was also not good. After hearing learned advocates appearing for

the respective, parol was granted to the petitioner and still he is in parol.

5. Today I have heard Mr.B.M.Mangukia, learned advocate for the petitioner at length and Mr.S.J.Dave, learned Addl. Govt. Pleader for the State. At the end of arguments, learned advocate for the petitioner has restricted his arguments only on the point that some of the documents namely, the documents shown at page Nos.74, 75, 77, 79, 85 and 88 which have been supplied by the authority to the petitioner are not legible.

6. I have verified the aforesaid documents. Said contentions were raised in the petition also. Looking to the documents as shown at pages mentioned above, I am of the opinion that most of these documents are illegible. Since legible copies of these documents have not been supplied to the petitioner, the rights of the petitioner of preferring an effective representation under Article 22(5) of the Constitution of India are violated. Therefore, the order of detention becomes illegal. It has been held by a Division Bench of this Court in the case of Pokhrajbhai Sohanbhai Chandel Vs. District Magistrate, Surat and Ors, reported In 1991(2) G.L.R. page 753 at head note as under:

"Preventive Detention--Constitution of India, 1950--Art.22(5)--Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 (VII of 1980)--Sec.3--Out of the copies of documents supplied to detenu copy of one document found to be illegible--Right to make effective representation infringed--Detention order liable to be set aside."

Relying upon the above referred judgment, I am of the opinion that since the petitioner has been supplied with illegible copies of some of the documents, the opportunity of making an effective representation by the petitioner has been affected which makes the order of detention illegal.

6. In view of the above, the petition is allowed. The impugned order of detention dated 3-5-2000 passed against the detenu is hereby quashed. The detenu-Pravinbhai @ Pinabhai Shamjibhai Gujarati is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs. Writ be sent to Jail Superintendent, District Jail, Junagadh.

(R.P.DHOLAKIA,J.)

RADHAN/